

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOTIVA ENTERPRISES LLC,

Defendant.

THE DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENTAL
CONTROL, an agency of the State of
Delaware

Plaintiff,

v.

MOTIVA ENTERPRISES LLC,

Defendant.

Civil Action No. 02-1292-SLR

Civil Action No. 02-1293-SLR

CONSENT DECREE

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INTRODUCTION

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint on July 15, 2002 against Defendant Motiva Enterprises LLC ("Motiva") regarding the refinery owned and operated by Motiva Enterprises LLC in Delaware City, Delaware (the "Delaware City Refinery"). On September 2, 2003, the Court granted the United States' motion to file an amended complaint.

Plaintiff the Department of Natural Resources and Environmental Control ("DNREC"), an agency of the State of Delaware, filed a Complaint on July 15, 2002 against Defendant Motiva regarding the Delaware City Refinery. On September 2, 2003, the Court granted DNREC's motion to file an amended complaint.

The United States' Amended Complaint (D.I. 69) alleges that, in connection with the incident on July 17, 2001, in which Tank No. 393 exploded, caught fire, and released spent sulfuric acid and other tanks released some or all of their contents, Motiva violated the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387 ("Clean Water Act"), and the Clean Air Act, 42 U.S.C. §§ 7401-7671q ("Clean Air Act"), and is liable for response costs incurred by EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"). The United States' Amended Complaint further alleges that Motiva's Spill Prevention Control and

Countermeasures ("SPCC") Plan and conditions at the Delaware City Refinery violated the Clean Water Act. The United States' Amended Complaint further alleges that, in connection with certain releases on June 23, 2000 and August 12, 2000, Motiva violated the Emergency Planning and Community Right-To-Know Act, 42 U.S.C.

§§ 11001-11050 ("EPCRA") and that, in connection with certain releases on March 1, 2000 and September 9, 2000, Motiva violated Section 103 of CERCLA, 42 U.S.C. § 9603.

DNREC's Amended Complaint (D.I. 68) alleges that, in connection with the incident on July 17, 2001, in which Tank No. 393 exploded and caught fire, Motiva released air contaminants, sulfur dioxide, nitrogen dioxide, and sulfuric acid mist to the atmosphere, released hazardous waste to the ground and land, and released effluents that exceeded NPDES permit limits, in violation of 7 Del. C. §§ 6003 and 6307(b). DNREC's Amended Complaint further alleges that Motiva is liable for reimbursement of costs incurred by DNREC in responding to the incident pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and 7 Del. C. § 9105(b).

On June 22, 2000, EPA issued a Unilateral Administrative Order for Abatement of Endangerment (the "Oil Tank Order") to Motiva. The Oil Tank Order required Motiva to remove three oil storage tanks from service and perform an out-of-service inspection of those tanks and to perform an out-of-service inspection of 15 other oil storage tanks at the Delaware City Refinery. Pursuant to a September 23, 2004 letter from Mr. Eduardo Rovira, Jr. to Ms. Heather Chelpaty of The Premcor Refining Group Inc. ("Premcor"), EPA Region III informed Premcor that the actions required by

the Oil Tank Order had been completed.

On August 1, 2001, EPA issued an Administrative Order for Removal Response Action (the "Acid Order") to Motiva pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a). The Acid Order required Motiva, inter alia, to drain all the remaining sulfuric acid out of the remaining tanks at the acid tank farm, provide EPA with an inventory of all tanks at the Delaware City Refinery and their contents, and develop and implement a tank inspection and repair program.

Motiva does not admit any liability to the United States or DNREC arising out of the transactions or occurrences alleged in the Amended Complaints.

Effective May 1, 2004, Premcor acquired from Motiva the assets that generally comprise the Delaware City Refinery. The Amended Complaints do not allege that Premcor is liable for any of the transactions or occurrences alleged in the Amended Complaints.

Premcor agrees to be and is bound by certain terms of this Consent Decree. Premcor is not responsible for Motiva's obligations under this Consent Decree. Motiva is not responsible for Premcor's obligations under this Consent Decree.

Prior to the Effective Date of this Consent Decree, Premcor converted tank No. 323 from an equalization tank to a spill diversion and containment tank.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

The objectives of this Consent Decree are to minimize safety and environmental risks at the Delaware City Refinery.

NOW, THEREFORE, before the taking of any testimony at trial, without the adjudication or admission of any issues of fact or law except as provided in Section I below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§1331, 1345, 1355, 1367, and 1651; Sections 309(b), 311(b)(3), and 311(b)(7)(E) of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321(b)(3) and 1321(b)(7)(E); Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); Sections 103, 107, 109(c), and 113(b) of CERCLA, 42 U.S.C. §§9603, 9607, 9609(c), and 9613(b); Sections 304 and 325(b)(3) of EPCRA, 42 U.S.C. §§ 11004 and 11045(b)(3); and over the Parties. Venue lies in this District pursuant to Sections 309(b) and 311(b)(7)(E) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§9607 and 9613(b); Section 325(b)(3) of EPCRA, 42 U.S.C. §11045(b)(3); Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); and pursuant to 28 U.S.C. §1391(b) and (c) and 28 U.S.C. § 1395, because Motiva is, and, at the time the action was commenced, was, located in, residing in, and doing business in this judicial district, and because the violations and releases that are the subject of this action, and a substantial part of the events or omissions giving rise to the claims, occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Motiva

consents to the Court's jurisdiction over this Decree or such action and over Motiva, and consents to venue in this judicial district. For the purposes of this Decree, or any action to enforce this Decree, Premcor consents to the Court's exercise of subject matter and personal jurisdiction and the Court's jurisdiction over this Decree, and consents to venue for the purposes of enforcing Premcor's obligations under this Consent Decree.

2. Notice of commencement of this action has been given to the State of Delaware pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, DNREC, and upon Motiva, its agents, successors, and assigns, and, to the extent that obligations are imposed on Premcor herein, upon Premcor, its agents, successors, and assigns.

4. Motiva and Premcor, as applicable, shall provide a copy of any relevant portions of this Consent Decree to all officers, employees, and agents who are primarily responsible for ensuring compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Motiva and Premcor shall condition any contract to perform such work upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, neither Motiva nor Premcor shall raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this

Consent Decree (without waiving Motiva's or Premcor's rights against any such person).

6. If Premcor proposes to sell or transfer part or all of its ownership interest in the Delaware City Refinery, it shall advise the purchaser or transferee ("purchaser/transferee") in writing of the existence of this Consent Decree and provide a copy of the Consent Decree prior to such sale or transfer. Premcor shall send a copy of such written notification to the United States and DNREC pursuant to Section XIV of this Decree (Notices) by certified mail, return receipt requested, before such sale or transfer, if possible, but no later than the closing date of such sale or transfer.

7. The obligations of Paragraph 6 shall not extend to the transfer of any non-refining assets located on or about Wrangle Hill Road, including without limitation vacant real property or real property used for non-refinery purposes, such as farming, the power plant, or the marketing terminal; provided, however, that if Premcor sells or transfers all or part of its ownership interest in the marketing terminal, Premcor shall send written notification to the United States and DNREC pursuant to Section XIV of this Decree (Notices) by certified mail, return receipt requested, before such sale or transfer, if possible, but no later than 30 days after the closing date of such sale or transfer. In addition, the phrase "sell or transfer all or part of its ownership interest" as used in Paragraphs 6 and 7 shall not include the posting of assets as collateral for any debt or indenture or the transfer of stock constituting a non-controlling interest in the Delaware City Refinery.

III. DEFINITIONS

8. Unless otherwise provided in this Decree, terms used in this Consent Decree that are defined in the Clean Water Act, the Clean Air Act, or CERCLA, or in regulations promulgated pursuant to those acts, shall have the meanings assigned to them in the Clean Water Act, Clean Air Act, CERCLA, or such regulations, to the extent that the context in which the terms are used in the Consent Decree indicates that the statutory or regulatory meanings are appropriate. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Amended Complaints" shall mean the United States' Amended Complaint and DNREC's Amended Complaint.

b. "API Standard 650" shall mean the American Petroleum Institutes's Standard 650, Welded Steel Tanks for Oil Storage, Tenth Edition, November 1998 (including the January 2000 Addendum 1, the November 2001 Addendum 2, and the September 2003 Addendum 3), or the most recent, subsequent edition of that standard. A reference to a particular paragraph or appendix of API Standard 650 refers to the paragraph or appendix of the Tenth Edition, November 1998 (including the January 2000 Addendum 1, the November 2001 Addendum 2, and the September 2003 Addendum 3) or to the corresponding paragraph or paragraphs or appendix or appendices in the most recent, subsequent edition of the standard.

c. "API Standard 653" shall mean the American Petroleum Institute's Standard 653, Tank Inspection, Repair, Alternation, and Reconstruction, Third Edition, December 2001 (including the September 2003 Addendum No. 1), or the most

recent, subsequent edition of that standard. A reference to a particular paragraph or appendix of API Standard 653 refers to the paragraph or appendix in the Third Edition, December 2001 (including the September 2003 Addendum No. 1), or to the corresponding paragraph or paragraphs or appendix or appendices in the most recent, subsequent edition of the standard.

d. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

e. "Clean Air Act" shall mean the Clean Air Act, 42 U.S.C. §§ 7401-7671q.

f. "Clean Water Act" shall mean the Clean Water Act, formally entitled the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

g. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in the Table of Contents).

h. "Day" (whether or not capitalized) shall mean a calendar day unless expressly stated to be a working day. In computing due dates under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

i. "Delaware City Refinery" shall mean the petroleum refinery located at 4550 Wrangle Hill Road, Delaware City, Delaware. The term shall not include the power plant or the marketing terminal.

j. "DNREC" shall mean the Department of Natural Resources

and Environmental Control, an agency of the State of Delaware, and any successor departments or agencies of the State of Delaware.

k. "DNREC's Amended Complaint" shall mean Plaintiff DNREC's Amended Complaint (D.I. 68) filed pursuant to the Court's Order of September 2, 2002 (D.I. 67).

l. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

m. "EPCRA" shall mean the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001-11050.

n. "Effective Date" is defined in Section XV of this Decree.

o. "Motiva" shall mean Motiva Enterprises LLC.

p. "NACE Standard RP0294" shall mean the NACE Standard RP0294-94 (reprinted with Typographical Corrections February 1995), *Standard Recommended Practice: Design, Fabrication, and Inspection of Tanks for the Storage of Concentrated Sulfuric Acid and Oleum at Ambient Temperatures*, or the most recent, subsequent edition of that standard. A reference to a particular paragraph of NACE Standard RP0294 refers to the paragraph in the NACE Standard RP0294-94 (reprinted with Typographical Corrections February 1995), or to the corresponding paragraph or paragraphs in the most recent, subsequent edition of the standard.

q. "Paragraph" (except when referring to a paragraph in API Standard 650 or 653 or NACE Standard RP0294-94) shall mean a portion of this Decree identified by an Arabic numeral.

r. "Parties" shall mean the parties to this Consent Decree: the United States, DNREC, Motiva, and Premcor.

s. "Premcor" shall mean The Premcor Refining Group Inc.

t. "Section" shall mean a portion of this Decree identified by a Roman numeral.

u. "State" shall mean the State of Delaware.

v. "United States" shall mean the United States of America, acting on behalf of EPA.

w. The "United States' Amended Complaint" shall mean the United States' Amended Complaint (D.I. 69) filed pursuant to the Court's Order of September 2, 2003 (D.I. 67).

IV. CIVIL PENALTY AND RESPONSE COSTS

9. Within 30 days after the Effective Date of this Consent Decree, Motiva shall pay a civil penalty of \$6,250,000 to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Motiva following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Delaware. Premcor shall bear no responsibility for the payment of this civil penalty.

10. Within 30 days after the Effective Date of this Consent Decree, Motiva shall pay a civil penalty of \$5,750,000 to DNREC. Payment shall be made by funds available same day by certified or cashier's check delivered by overnight delivery to the Department of Natural Resources and Environmental Control, Fiscal Office,

Richardson and Robbins Building, 89 Kings Highway, Dover Delaware 19901. Premcor shall bear no responsibility for the payment of this civil penalty.

11. Within 30 days after the Effective Date of this Consent Decree, Motiva shall pay to EPA \$70,626 as a reimbursement for CERCLA response costs incurred by the United States in response to the incident of July 17, 2001 at the Delaware City Refinery. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Motiva by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Delaware. The total amount paid pursuant to this Paragraph shall be deposited in the EPA Hazardous Substance Superfund. Premcor shall bear no responsibility for the payment of these response costs.

12. Within 30 days after the Effective Date of this Consent Decree, Motiva shall pay to DNREC \$100,089.19 as a reimbursement for CERCLA and Hazardous Substance Cleanup Act, 7Del. C. Ch. 91, costs incurred by DNREC in response to the incident of July 17, 2001 at the Delaware City Refinery. Payment shall be made by funds available same day by certified or cashier's check delivered by overnight delivery to the Department of Natural Resources and Environmental Control, Fiscal Office, Richardson and Robbins Building, 89 Kings Highway, Dover Delaware 19901. Premcor shall bear no responsibility for the payment of these response costs.

13. At the time of payments required by this Section, Motiva shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States and DNREC in accordance with Section XIV of this

Decree (Notices). The notices shall reference the civil action numbers of these cases and, with respect to the payment under Paragraph 9, shall reference DOJ case Number 90-5-1-1-07551 and, with respect to the payment under Paragraph 11, shall reference DOJ case Number 90-5-1-1-07551/1 and EPA CERCLA Site ID Number A3G1.

14. Motiva shall not deduct any civil penalty paid under this Section in calculating Motiva's federal or State income tax.

V. COMPLIANCE REQUIREMENTS

A. ALKYLATION UNIT OPERATIONS

15. The existing Stratco alkylation unit at the Delaware City Refinery (the "Stratco Unit") is equipped with a blowdown drum, designated as 27-D-103 (the Blowdown Drum). The Stratco Unit is also equipped with two vapor recovery ejectors, designated as 27J-303A and 27J-303B (the "Vapor Recovery Ejectors"). The two Vapor Recovery Ejectors do not operate simultaneously; instead, each Vapor Recovery Ejector serves as a backup for the other. The Blowdown Drum and each Vapor Recovery Ejector individually and collectively serve to reduce the quantity of hydrocarbons in spent sulfuric acid. Premcor shall not transfer spent sulfuric acid out of the Stratco Unit (whether to acid storage tanks or an acid plant or otherwise) if the Blowdown Drum, or, if Replacement Equipment for the Blowdown Drum is installed, if such Replacement Equipment, is out of service. In addition, Premcor shall not transfer spent sulfuric acid out of the Stratco Unit (whether to acid storage tanks or an acid plant or otherwise) if both Vapor Recovery Ejectors, or, if Replacement Equipment for the Vapor Recovery Ejectors is installed, if such Replacement Equipment, is out of service. The foregoing

prohibitions, however, shall not apply if Premcor determines that, even though the Blowdown Drum, both Vapor Recovery Ejectors, or Replacement Equipment, as applicable, is out of service, a transfer of spent sulfuric acid from the Stratco Unit, under emergency conditions and as part of the process of taking the Stratco Unit out of service, would provide greater protection to human health and the environment than keeping the spent sulfuric acid within the Stratco Unit.

16. The existing Kellogg alkylation unit at the Delaware City Refinery (the "Kellogg Unit") is equipped with an acid settler, designated as 27-D-3 (the "Acid Settler"). The Acid Settler serves to reduce the quantity of hydrocarbons in spent sulfuric acid. Premcor shall not transfer spent sulfuric acid out of the Kellogg Unit (whether to acid storage tanks or an acid plant or otherwise) if the Acid Settler, or, if Replacement Equipment for the Acid Settler is installed, such Replacement Equipment, is out of service; provided, however, that the foregoing prohibition shall not apply if Premcor determines that, even though the Acid Settler or Replacement Equipment, as applicable, is out of service, a transfer of spent sulfuric acid from the Kellogg Unit, under emergency conditions and as part of the process of taking the Kellogg Unit out of service, would provide greater protection to human health and the environment than keeping the spent sulfuric acid within the Kellogg Unit.

17. "Replacement Equipment" as used in this Subsection V.A means equipment that replaces any part of the hydrocarbon-reducing function of the Blowdown Drum, the Vapor Recovery Ejectors, or the Acid Settler. If Premcor installs Replacement Equipment, within ten days of such installation, Premcor shall describe the Replacement

Equipment in a written notice submitted to the United States and DNREC in accordance with Section XIV of this Consent Decree (Notices).

B. SPENT SULFURIC ACID

18. No later than six months after the Effective Date of this Decree, Premcor shall commence managing spent sulfuric acid at the Delaware City Refinery in accordance with the following standards, and, to the extent required by Subparagraph b, below, shall submit to EPA and DNREC a revised Risk Management Plan addressing spent sulfuric acid.:

a. Premcor shall manage spent sulfuric acid in accordance with the Occupational Safety and Health Administration's Process Safety Management ("PSM") regulation, 29 C.F.R. §1910.119, as if spent sulfuric acid were listed in Appendix A of that section with a 5,000 pound threshold and therefore covered under Section 1910.119(a)(1)(i) of the PSM regulation, and

b. Premcor shall manage spent sulfuric acid in accordance with EPA's accident prevention regulations, 40 C.F.R. Part 68, as if spent sulfuric acid were listed in 40 C.F.R. § 68.130 with a 5,000 pound threshold and therefore a "regulated substance" as that term is used in 40 C.F.R. §§ 68.3 and 68.10.

19. This Subsection V.B does not apply to operations conducted by E.I. du Pont de Nemours and Co., to any company or entity affiliated with or related to E.I. du Pont de Nemours and Co. or any of its successors or assigns (other than Premcor), or to spent acid that has been transferred into vehicles or containers for off-site transport.

C. PROCESS HAZARD ANALYSES

20. Alkylation Unit and Acid Storage Tanks. Premcor has completed and submitted to the United States and DNREC the final written evaluation report of a process hazard analysis [specifically a Hazard and Operability Analysis (HAZOP), referenced in 40 C.F.R. § 68.67(b)(4)] of the Alkylation Unit and the tanks that Premcor has used or plans to use to contain spent or fresh sulfuric acid (presently Tank Nos. 320, 322, and 398). No later than three months after the Effective Date of this Decree, Premcor shall conduct and submit to the United States and DNREC in accordance with Section XIV of this Consent Decree (Notices) the final written evaluation report on a Failure Modes and Effects Analyses (FMEA), referenced in 40 C.F.R. § 68.67(b)(5), of the following components associated with the Alkylation Unit: (a) for the Kellogg Unit – 27-D-3, Acid Decanter; 27-P-4A&B, Acid Circulation Pumps; Tank 322, Spent Acid Tank; 27-P-28, Spent Acid Transfer Pumps; and Tank 398, Spent Acid Tank; (b) for the Stratco Unit – 27-D-103, Acid Blowdown drum; 27-S-102, Acid Blowdown Drum Separator; 27-P-106A&B, Acid Blowdown Pumps; 27-P-303, Acid Blowdown Hydrocarbon Pumps; 27-D-301, Alkaline Water Separator Drum; 27-J-303A&B, Acid Vapor Ejectors; and 27-P-302, Separator Drum Acid Pump.

21. Other Inerted Storage Tanks and Associated Inerting Systems.

Within six months after the Effective Date of this Consent Decree, Premcor shall conduct a process hazard analysis of all inerted storage tanks and associated inerting systems at the Delaware City Refinery (other than the systems for which a process hazard analysis was performed pursuant to Paragraph 20), and submit to the United States and DNREC in

accordance with Section XIV of this Consent Decree (Notices) the final written evaluation report on the analyses required by this Paragraph. The process hazard analyses carried out pursuant to this Paragraph shall be a Hazard and Operability Analysis (HAZOP), referenced in 40 C.F.R. §68.67(b)(4). The inerted storage tanks at the Delaware City Refinery subject to the requirements of this Paragraph include, but may not be limited to, the following tanks: Tank Nos. 045, 060, 071, 075, 076, 077, 078, 302, 305, 306, 317, 318, 319, 326, 331, 332, 349, 350, 356, 357, 358, 360, 361, 372, 414, 471, 570, and 581. The provisions of this Paragraph shall not extend to inerted systems used to protect electrical systems, such as field switch gear or other electrical support structures, nor to the use of inert gases for specific applications on an "as-applied" basis, including, without limitation, for drying or purging equipment prior to entering the equipment and returning it to service.

22. The process hazard analyses required by Paragraphs 20 and 21 of this Consent Decree shall review applicable equipment, instrumentation, utilities, human actions, and external factors to identify potential deviations from process design, maintenance, inspection, or operating practices that may lead to releases, especially those involving accidental hydrocarbon releases, that have the potential to impact human health or the environment, or cause damage to equipment. The team leader will be experienced in performing HAZOPs. The team will consist of members with expertise in different disciplines, including operation, design, inspection, and maintenance of inerted tank systems. The team shall exercise its independent judgment in making recommendations to management to minimize the potential for releases.

23. The final written evaluation reports on the process hazard analyses required by Paragraphs 20 and 21 of this Consent Decree shall, in addition to addressing the items listed at 40 C.F.R. § 68.67(c), describe how each analysis addressed the objectives of the analysis and make specific recommendations for actions to address the hazards identified. Recommended actions shall be ranked according to the risk posed by the hazard. The final written evaluation report:

- shall be signed by all members of the team conducting the process hazard analysis,
- shall include a description of the skills or expertise of the team member and how that skill or expertise is relevant to the process hazard analysis;
- shall list the titles of employees interviewed; and
- shall list documents consulted.

24. In accordance with the schedule set forth in this Paragraph, Premcor shall submit to the United States and DNREC, in accordance with Section XIV of this Consent Decree (Notices), management follow-up reports corresponding to the final evaluation reports submitted pursuant to Paragraphs 20 and 21 of this Consent Decree. The management follow-up reports shall state what actions have been taken in response to the corresponding final written evaluation report, the schedule for actions to be taken in response to the final evaluation report, and, if management disagrees with any of the recommendations in the final evaluation report, an explanation of management's position. Premcor shall submit at least 40% of all required management follow-up reports within 30 days after the submittal of the last required final evaluation report, an

additional 30% within 60 days after the submittal of the last required final evaluation report, and the remaining 30% within 90 days after the submittal of the last required final evaluation report.

D. TANK INSPECTIONS

25. Standards. Premcor shall conduct inspections, maintenance, and repair in accordance with API Standards 653 and 650 of each carbon and low alloy steel tank at the Delaware City Refinery that holds oil, fresh acid, spent acid, or any substance listed, as of the Effective Date of this Consent Decree or during the term of this Consent Decree, pursuant to 40 C.F.R. § 302.4, EPA's chemical accident prevention regulations at 40 C.F.R. Part 68, or DNREC's Accidental Release Prevention Regulations. The inspections of each carbon and low alloy steel tank at the Delaware City Refinery that holds fresh acid or spent acid shall be conducted in accordance with NACE Standard RP0294. Nothing in this Consent Decree means or implies, or shall be construed to mean or imply, that standards other than API Standards 653 and 650 and NACE Standard RP0294 are inapplicable to tank inspection or maintenance activities.

26. Inspector Qualifications. All inspections of carbon and low alloy steel tanks at the Delaware City Refinery required by Paragraph 25 shall be conducted by API-certified inspectors, provided that any technicians working under the direction of an API-certified inspector need not themselves be certified inspectors.

27. Minimum Acid Tank Inspection Frequencies.

a. External Inspections - Once Every Two Years. Premcor shall ensure that all tanks at the Delaware City Refinery that are used to hold fresh

sulfuric acid or spent sulfuric acid receive an external inspection at least once every 24 months during the term of this Consent Decree. The first such external inspection shall take place within the 24-month period following the tank's most recent external or internal inspection, but in no event earlier than three months after the Effective Date of this Consent Decree. For the purposes of this Consent Decree, an "external inspection" shall mean the kind of inspection described in paragraph 5.5 of NACE Standard RP0294 and paragraph 6.3.2 of API Standard 653 and using the In-Service Inspection Checklist in Appendix C of API Standard 653.

b. Internal Inspections. During the first quarter of 2005, Premcor inspected internally Tank Number 398, which had been used to store spent sulfuric acid, and which Premcor intends to put into a different service. During the fourth quarter of 2004, Premcor installed new storage tanks, Numbers 320 and 322, to replace storage tanks previously designated with the same numbers. The previous and current Tank Number 320 and 322 were and will be used for the storage of fresh sulfuric acid and spent sulfuric acid, respectively. Premcor shall ensure that all tanks at the Delaware City Refinery that are used to hold fresh sulfuric acid or spent sulfuric acid receive at least one internal inspection after the Effective Date, but before the termination, of this Consent Decree. For the purposes of this Consent Decree, an "internal inspection" shall mean the kind of inspection described in paragraph 5.6 of NACE Standard RP0294 and paragraph 6.4 of API Standard 653 and using the Out-of-Service Checklist in Appendix C of API Standard 653.

28. Review of Inspection Reports. Premcor shall ensure that

inspection reports of inspections of carbon and low alloy steel tanks shall be reviewed and approved or disapproved within 60 days of the inspection in accordance with the procedures specified in Appendix I (Tank Inspection Guidelines).

29. For the purposes of this Subsection D of this Consent Decree, "Tank" shall mean a single stationary, aboveground containment vessel constructed of non-earthen materials and having a capacity greater than 250 gallons. The term includes all ancillary equipment such as aboveground or underground pipes and dispensing systems up to the first point of isolation; provided, however, that any inspection of aboveground or underground piping performed under this Consent Decree shall be performed in accordance with API Standard 570. In addition, the term does not include any of the following:

- septic tanks;
- surface impoundments, pits, ponds, or lagoons;
- process vessels or equipment (including, but not limited to, seal tanks, surge tanks, bleed tanks, check and delay tanks, and vessels designed to achieve phase separation or chemical change);
- pressure vessels;
- transformers, regulators, or breakers used for the purpose of electrical power distribution and transmission; and
- containment vessels, other than spill diversion Tank 323, used for the storage and conveyance of wastewater to a treatment plant regulated in accordance with the requirements of the Clean Water Act.

E. HOLES OR LEAKS IN TANKS

30. Subject to Paragraph 33, if Premcor identifies a hole or leak in any

storage tank at the Delaware City Refinery holding oil, fresh acid, spent acid, or any substance listed (as of the Effective Date of this Consent Decree or during the term of this Consent Decree) pursuant to 40 C.F.R. § 302.4, EPA's chemical accident prevention regulations at 40 C.F.R. Part 68, or DNREC's Accidental Release Prevention Regulations, then Premcor's response to the hole or leak, including any date set for temporary or permanent repairs and the nature of the repairs, shall be approved, in a signed and dated document (or in an electronic record that identifies the name of the author and the date the author created the record) by the Operations Superintendent for the relevant area. The written approval shall state why Premcor's response to the hole or leak does not present an imminent safety threat (other than to responders) or an imminent threat to the environment.

31. Any time a temporary repair is made to a tank, a date shall be set by which a permanent repair shall be made to the tank.

32. When a hole or a leak subject to this Subsection E has been detected in the bottom or the shell-floor joint of any tank, or when any tank is taken off line for permanent repairs that require cleaning and entry into the tank, the tank shall not be returned to service until the permanent repair has been made and the tank has been internally inspected.

33. Refinery Manager Approval. In any instance in which:

- (i) a hole or leak in a tank has been identified and Premcor proposes to use or operate the tank for a time without making either a permanent or temporary repair; or

- (ii) a hole or leak in a tank has been temporarily repaired and a date has been set for permanent repair, but then Premcor proposes to postpone or extend the date for the permanent repair;

then the Refinery Manager or, if the Refinery Manager is unavailable, the Refinery Manager's designee, must explain in a signed and dated writing why the continued use of the tank does not present an imminent safety threat or an imminent threat to the environment and for how long the tank can remain in service without being permanently repaired.

34. In any situation in which Premcor observes a possible hole or leak, but is uncertain as to whether there is in fact a hole or leak, then an API-certified inspector shall evaluate the possible hole or leak and advise Premcor as to whether the observed condition constitutes or was or is the result of a hole or leak.

35. For the purposes of these requirements, "holes or leaks" in tanks do not include openings or gaps in seals, gaskets, slotted guidepole membranes, sleeve seals, or roof drains.

36. For the purposes of this Subsection E of this Consent Decree, "Tank" shall mean a single stationary, aboveground containment vessel constructed of non-earthen materials and having a capacity greater than 250 gallons, but the term shall not include aboveground or underground pipes and dispensing systems. The term does not include any of the following:

- septic tanks;
- surface impoundments, pits, ponds, or lagoons;

- process vessels or equipment (including, but not limited to, seal tanks, surge tanks, bleed tanks, check and delay tanks, and vessels designed to achieve phase separation or chemical change);
- pressure vessel;
- transformers, regulators, or breakers used for the purpose of electrical power distribution and transmission; and
- containment vessels, other than spill diversion Tank 323, used for the storage and conveyance of wastewater to a treatment plant regulated in accordance with the requirements of the Clean Water Act.

F. UNSAFE CONDITION REPORTS

37. Premcor shall respond to unsafe conditions at the Delaware City Refinery in accordance with Appendix J (Primary Elements of Unsafe Condition Reporting Program).

G. HOT WORK PERMITS

38. Beginning no later than six months after the Effective Date, Premcor shall implement the following as part of its procedure for issuing hot work permits at the Delaware City Refinery:

a. Premcor shall maintain a unit-specific or area-specific hot work permit book for each unit or area^{1/} at the Refinery for which hot work permits are issued, and a record shall be retained in such unit-specific or area-specific permit book of (i) each hot work permit that is issued for the relevant unit or area and (ii) each instance in which a hot work permit is not issued because of the presence of flammable or

^{1/} For the purposes of this Section V.G, an “area” shall consist of a major part of an operation unit. In implementing this Section V.G Premcor shall determine for each unit whether to maintain the hot work permit book and hot work permit board on a unit-specific or area-specific basis.

explosive gasses, vapors, or liquids.

b. In addition, Premcor shall maintain a unit-specific or area-specific, as appropriate, hot work permit board for each unit or area, as applicable, at the Refinery for which hot work permits are issued. Premcor shall post on the unit or area hot work permit board a copy of all hot work permits issued for the unit or area; such copies of hot work permits shall remain on the hot work permit board while the hot work permits remain active. Premcor shall also post on the unit or area hot work permit board a copy of each hot work permit for the unit or area that was not issued because of the presence of flammable or explosive gases, vapors or liquids; a copy of such document shall remain on the hot work permit board until a separate written form is completed in accordance with Paragraph 38.d, reflecting a determination that it is safe to perform the hot work permit pursuant to Paragraph 38.d (i) or (ii).

c. Prior to issuing any hot work permit for a unit or an area, the operator shall review the unit or area hot work permit board to identify whether a determination has been made not to issue a hot work permit because of the presence of flammable or explosive gasses, vapors, or liquids.

d. If the operator determines that the most recently-requested hot work permit for the unit or area was not issued because of the presence of flammable or explosive gasses, vapors, or liquids, then the operator shall not issue the hot work permit unless (i) Premcor has determined what caused the flammable or explosive gasses, vapors, or liquids to be present and has either made changes or repairs, if changes or repairs are necessary, to eliminate the source of the flammable or explosive gasses,

vapors, or liquids, or (ii) if, after a diligent effort, Premcor is unable to determine what caused the flammable or explosive gasses, vapors, or liquids to be present, Premcor conducts continuous gas monitoring during the implementation of the hot work. Prior to issuing the hot work permit in accordance with this Subparagraph d, the operator shall complete a separate written form in the unit-specific or area-specific hot work permit book that reflects a determination that it is safe to perform the hot work pursuant to Subparagraph 38.d (i) or (ii), which determination shall explain what was done to identify the source of the flammable or explosive gasses, vapors, or liquids and explain why it is safe to perform the hot work.

e. All hot work permits issued by the operator shall be signed and dated upon issuance.

39. During any turnaround or construction activity involving more than 35 workers, the provisions of Paragraph 38 that require hotwork permits be kept in a unit-specific hot work permit book shall be suspended and the permits may be kept in another location.

H. VALVES

40. Closing Secondary Containment Valves. Premcor shall keep drain valves in secondary containment structures around all storage tanks closed except when draining liquid in accordance with this Paragraph. Containment areas shall be drained by: (1) inspecting the containment area for the presence of liquids other than water; (2) determining whether any liquids present other than water can safely and properly be drained to an oily water sewer system; (3) if they cannot, properly removing those liquids

from the containment area; and (4) then manually operating the secondary containment drain valve. Premcor shall re-close drain valves after each drainage event is complete.

41. Double Valves, Car Seals, or Locked/Sealed Tank Master Drain Valves. For the purposes of this Consent Decree, the term "master drain valve" shall mean valves installed on tanks for the purpose of removing water from the tank. No later than six months after the Effective Date of this Decree, Premcor shall have installed double valves, car seals, or locks on master drain valves on all tanks that have master drain valves. Except when draining liquid from tank bottoms or when a tank is out of service after being emptied, locks shall be kept locked, seals on car seals shall be maintained intact, and both valves of double valves shall be kept closed.

I. SPCC PLAN

42. Updating SPCC Plan. By the date this Consent Decree is lodged with the Court, Premcor shall ensure that the Delaware City Refinery is in compliance with currently-applicable requirements under the federal Spill Prevention Control and Countermeasures ("SPCC") regulations promulgated at 40 C.F.R. Part 112 and submit a current SPCC plan for the facility to EPA for review and a determination of whether the plan meets currently-applicable minimum requirements. Upon the applicable compliance date of EPA's amended SPCC regulations, Premcor shall (i) submit an amended SPCC plan for the facility to EPA for review and a determination of whether the plan meets then-applicable minimum requirements, and (ii) commence implementation of the amended SPCC Plan in a manner consistent with EPA's amended regulatory standard. The definition of "Delaware City Refinery" in Paragraph 8 of this Decree shall not limit

the scope of the SPCC plan.

J. MATERIAL SAFETY DATA SHEETS

43. Premcor shall maintain a material safety data sheet ("MSDS") substantially in the form included in Appendix K for spent sulfuric acid potentially containing free hydrocarbons. That MSDS shall govern Premcor's management of the spent acid within the Alkylation Unit, until the point that spent sulfuric acid is transferred from the Alkylation Unit. Premcor may propose revisions to the MSDS at Appendix K for review and approval by EPA and DNREC and such approval shall not be unreasonably withheld or delayed. Revisions to the MSDS made in accordance with this Paragraph shall not require Court approval.

44. Motiva shall maintain a MSDS substantially in the form included in Appendix L for spent sulfuric acid. Motiva shall notify the United States of any revisions Motiva proposes to make or makes to its MSDS for spent sulfuric acid, no later than the date of the issuance of the revision. If the United States concludes that the revised MSDS substantially changes the MSDS as set forth in Appendix L, the United States may immediately move the Court to order Motiva to restore the original terms of the MSDS set forth in Appendix L. The Court shall grant such motion if it finds that the revised MSDS substantially changed the MSDS set forth in Appendix L.

K. TOC ANALYZER

45. Within 90 days of the Effective Date of this Consent Decree, Premcor shall install a "TOC Analyzer" at the Waste Water Treatment Plant ("WWTP") within the Delaware City Refinery. "TOC Analyzer" shall mean an analyzer designed for

and capable of analyzing total organic carbon within a range from 10 milligrams per liter to 2,500 milligrams per liter.

46(a). Within 90 days of the Effective Date of this Consent Decree, Premcor shall install a sampling probe within the stormwater (non process) sewer line, upstream from the WWTP but downstream from the first debris removal chamber. The sampling probe, in association with the TOC Analyzer, shall be capable of analyzing in-line concentrations of TOC at a frequency of at least five times per minute, and provide nearly instantaneous results to operators at the WWTP. In addition, the TOC Analyzer shall be capable of functioning as a "Benchtop TOC Analyzer" at the WWTP to analyze samples collected by the operators. (Use of the TOC Analyzer in this manner shall be termed "Benchtop Mode").

46(b). Premcor shall implement reasonable and appropriate maintenance, repair and replacement actions in an effort to maintain the TOC Analyzer functioning optimally and in service. Premcor shall perform quality assurance and quality control protocols to assure confidence in and validity of the TOC analysis results. Premcor shall establish and implement appropriate alarm levels for in-stream function of the TOC Analyzer. Premcor shall attempt to set alarm levels such that alarms would be triggered only upon an aberrational event at the Delaware City Refinery that is reasonably likely to result in a loading that would exceed the expected operational capabilities of the WWTP. Personnel at the WWTP shall be appropriately trained in the utilization of the TOC Analyzers.

L. ENVIRONMENTAL MANAGEMENT SYSTEM

47. Premcor shall develop and commence implementation of an Environmental Management System in accordance with the provisions of Appendices G and H of this Consent Decree.

48. [This paragraph intentionally left blank.]

**VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS
AND ENVIRONMENTALLY BENEFICIAL PROJECTS**

49. Motiva shall implement the following supplemental environmental projects ("SEPs") and environmentally beneficial project ("EBP") (collectively "Projects") listed in this Paragraph in accordance with the schedules and other provisions of Appendices A through F to this Consent Decree, which are attached hereto and incorporated into this Decree by reference. In implementing the Projects, Motiva shall spend not less than the following in Eligible Project Costs:

<u>Project</u>	<u>Min. Expenditures</u>
Hybrid Bus SEP	\$2.0 million
Conservation Easement and Land Restoration SEP (Premcor shall grant the 285-acre conservation easement; see ¶51, below)	\$447,500
Delaware River Shellfish Restoration SEP	\$550,000
Local Fire Department Emergency Equipment SEP	\$165,000
Refinery Meteorological Monitoring Station SEP	\$550,000
Delaware River Monitoring EBP	\$250,000

50. "Eligible Project Costs" include the costs of planning and implementing the Project, including the costs of equipment, machinery, vehicles, and contractors and/or consultants retained to plan or implement a Project, but do not include overhead, legal fees, additional Motiva employee time and/or salary, Motiva's

administrative expenses, or Motiva's oversight of contractors.

51. Premcor shall grant the conservation easement and grant access to the easement area, as provided in Appendix B to this Decree (Conservation Easement Management and Restoration Project). Premcor shall not impede or interfere with activities being carried out under Appendix B.

52. Motiva is responsible for the satisfactory completion of the Projects in accordance with the requirements of this Decree. "Satisfactory completion" means that Motiva shall complete the work in accordance with the Project descriptions and specifications set forth in Appendices A through F and subsequent statements of work for the Projects, and that Motiva shall spend not less than the amount set forth in Paragraph 49.

53. With regard to the Projects, Motiva certifies the truth and accuracy of each of the following:

- a. That all cost information provided to EPA in connection with EPA's and DNREC's approval of the Projects is complete and accurate;
- b. That, as of the date of executing this Decree, Motiva is not required to perform or develop the Projects by any federal, state, or local law or regulation, nor is Motiva required to perform or develop any of the Projects by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the Projects are not projects that Motiva was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. That Motiva has not received, and is not negotiating to receive, credit for the Projects in any other enforcement action; and

e. That Motiva will not receive any reimbursement for any portion of the Projects from any other person.

54. Project Completion Reports

a. Within 90 days after the completion of each Project, Motiva shall submit a Project Completion Report to the United States and DNREC in accordance with Section XIV of this Consent Decree (Notices). The Project Completion Reports shall contain the following information:

i. A detailed description of the Project as implemented;

ii. A description of any problems encountered in completing the Project and the solutions thereto;

iii. An itemized list of all Eligible Project Costs;

iv. Certification that the Project has been fully implemented pursuant to the provisions of this Decree; and

v. A description of the environmental and public health benefits resulting from implementation of the Project (with a quantification of the benefits and pollutant reductions, if feasible).

b. Progress reports on the Projects are required pursuant to Paragraph 61.d.

55. EPA and DNREC may, in their reasonable discretion, require

information in addition to that described in the preceding Paragraph, in order to determine the adequacy of Project completion or eligibility of Project costs.

56. After receiving each Project Completion Report, the United States and DNREC shall notify Motiva whether or not Motiva has satisfactorily completed the Project. If the Project has not been satisfactorily completed as that term is used in Paragraph 52, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

57. Disputes concerning the satisfactory performance and/or satisfactory completion of Projects and the amount of Eligible Project Costs may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

58. Each submission required under this Section shall be signed by a Motiva official with knowledge of the Project and shall bear the certification language set forth in Paragraph 63, below.

59. With respect to the Project Completion Report for the Delaware River Shellfish Project, references to "the United States and DNREC" and "EPA and DNREC" in this Section shall be deemed to be references to "the United States" or "EPA" alone.

60. Any public statement, oral or written, in print, film, or other media, made by Motiva making reference to the Projects under this Decree shall include the following language: "This project was undertaken in connection with the settlement of two enforcement actions, United States v. Motiva and DNREC v. Motiva, brought on

behalf of the U.S. Environmental Protection Agency and the Delaware Department of Natural Resources and Environmental Control under the Clean Water Act, Clean Air Act, and other statutes."

VII. REPORTING REQUIREMENTS AND APPROVAL OF SUBMITTALS

61. Motiva or Premcor, as applicable, shall submit the following notices and reports:

a. Immediate Threats. If any action taken to comply with this Decree or any violation of this Decree may pose an immediate threat to the public health or welfare or the environment, Motiva or Premcor, as applicable, shall notify EPA and DNREC orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Motiva or Premcor, as applicable, first knew of, or should have known of, the threat. No later than 48 hours after the initial report to EPA and DNREC, Motiva or Premcor, as applicable, shall submit a written follow-up report to EPA and DNREC with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize the threat. If the cause of the threat cannot be fully explained at the time the report is due, Motiva or Premcor, as applicable, shall include a statement to that effect in the report, and Motiva or Premcor, as applicable, shall investigate to determine the cause of the threat and then shall submit an amendment to the report, including a full explanation of the cause of the threat within 30 days after Motiva or Premcor, as applicable, first knew of, or should have known of, the threat (the "first 30-day deadline"). If Motiva or Premcor, as applicable, cannot provide a full explanation of the cause of the threat by the first 30-day deadline, then within 30 days Motiva or

Premcor, as applicable, shall provide an update of the original notification, along with a projected date for providing the full explanation. If the projected date is more than 60 days after the first 30-day deadline, Motiva's or Premcor's projected date for providing the full explanation shall be subject to EPA and DNREC's approval.

b. Violations of the Consent Decree. This Subparagraph b shall not apply to any violation reported pursuant to Subparagraph a, above. If either Motiva or Premcor, as applicable, violates any requirement of this Consent Decree or concludes that it will violate the Consent Decree in the future, Motiva or Premcor, as applicable, shall notify the United States and DNREC of such violation and its likely duration in writing within ten working days of the day Motiva or Premcor, as applicable, first becomes aware of the violation or first concludes that a violation will occur, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Motiva or Premcor, as applicable, shall include a statement to that effect in the report. Motiva or Premcor, as applicable, shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Motiva or Premcor, as applicable, becomes aware of the cause of the violation (the "first 30-day deadline"). If Motiva or Premcor, as applicable, cannot provide a full explanation of the cause of the violation by the first 30-day deadline, then within 30 days Motiva or Premcor, as applicable, shall provide an update of the original notification, along with a projected date for providing the full explanation. If the projected date is more than 60

days after the first 30-day deadline, Motiva's or Premcor's projected date for providing the full explanation shall be subject to EPA and DNREC's approval.

c. Semiannual Reports by Premcor. After lodging of this Consent Decree and until termination of this Decree as to Premcor pursuant to Section XVIII (Termination), Premcor shall submit to EPA and DNREC by May 31 and November 30, by email and by U.S. Mail or an overnight delivery service, a semiannual report for the six-month period ending on the last day of the month that precedes the month of the due date (April 30 and October 31, respectively). The semiannual reports shall include:

i. Premcor's schedule for commencing and completing process hazard analyses and for conducting internal and external acid tank inspections required by this Consent Decree in the six months following the due date of the semiannual report;

ii. copies of internal and external inspection reports performed pursuant to Paragraph 27 of this Consent Decree, including any engineering review performed pursuant to Paragraph 28, that were completed during the prior six-month period;

iii. for tanks other than the acid storage tanks covered by Paragraph 27 of this Consent Decree, copies of inspection reports, including any engineering review of those inspection reports, that

(A) identify holes or leak governed by Section V.E of this Consent Decree;

(B) identify thinning of tank walls below the minimum thickness calculated according to the procedures of API Standard 653, or

(C) conclude that a tank must be taken out of service for repair within six months or less of the inspection (as used in this Subparagraph, to take a tank "out of service" means to stop adding liquid to the tank and to remove as much liquid as necessary to safely carry out a repair of the tank);

iv. copies of any Refinery Manager (or Refinery Manager designee) approvals issued under Paragraph 33 of this Consent Decree regarding holes or leaks in tanks;

v. copies of any inspections required by Paragraph 32, which shall include a statement of the repairs that are necessary before the tank is returned to service;

vi. the first two semiannual reports shall include copies of the summaries of unsafe conditions reviewed at, and copies of the notes regarding unsafe conditions of, Joint Health and Safety Committee meetings created and reviewed pursuant to Paragraph 37 of this Consent Decree and Appendix J, item 8, provided, however, that Premcor may redact such notes to provide only that information specifically addressing unsafe conditions under Appendix J, item 8; and

vii. a description of any delays encountered or anticipated that may affect the future schedule for implementation of the requirements of this Consent Decree and a description of efforts made to mitigate those delays or anticipated delays.

d. Semiannual Reports by Motiva. After lodging of this Consent Decree and until termination of this Decree as to Motiva pursuant to Section XVIII (Termination), Motiva shall submit to EPA and DNREC by May 31 and November 30, by email and by U.S. Mail or an overnight delivery service, a semiannual report for

the six-month period ending on the last day of the month that precedes the month of the due date (April 30 and October 31, respectively). The semiannual reports shall include a discussion of Motiva's progress in satisfying its obligations in connection with the Projects under Section VI of this Decree (Supplemental Environmental Projects) including, at a minimum, a narrative description of activities undertaken, a narrative description of Motiva's compliance with the Project descriptions and specifications set forth in Appendices A through F to this Decree and subsequent work plans or statements of work for the Projects, and a summary of costs incurred since the previous report.

62. All reports submitted pursuant to Paragraph 61.a and b (Immediate Threats and Violations of the Consent Decree) shall be submitted to the United States and DNREC, and all reports submitted pursuant to Paragraph 61.c or d (Semiannual Reports by Premcor and Motiva) shall be submitted to EPA (as opposed to the United States) and DNREC, in accordance with Section XIV of this Consent Decree (Notices).

63. Each written report submitted by Motiva under this Section shall be signed by a corporate manager responsible for environmental management and compliance and include the following certification, and each written report submitted by Premcor under this Section shall be signed by the Refinery Manager or, if the Refinery Manager is unavailable, the Refinery Manager's designee, and include the following certification:

I, the undersigned, hereby certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I

certify that the information is, on knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false or incomplete information, including the possibility of fine or imprisonment.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

64. Nothing in this Section VII relieves Motiva or Premcor, as applicable, of the obligation to provide the requisite notice for purposes of Section IX (Force Majeure) of this Consent Decree.

65. The reporting requirements of this Consent Decree do not relieve Motiva or Premcor of any reporting obligations required by the Clean Water Act, Clean Air Act, CERCLA, EPCRA, or 7 Del. C. Chs. 60, 63, 74A, and 77, or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

66. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to the following Paragraphs:

Paragraph 18 (the submission of a revised and updated Risk Management Plan);
Paragraph 20 (Alkylation Unit and Acid Storage Tanks);
Paragraph 21 (Other Inerted Storage Tanks and Associated Inerting Systems);
Paragraph 42 (SPCC Plan)
Paragraph 43 (regarding a Premcor MSDS);
Paragraph 61.a (regarding Immediate Threats, to the extent the last sentence of the Subparagraph is triggered);
Paragraph 61.b (regarding Violations of the Consent Decree, to the extent the last sentence of the Subparagraph is triggered);

Paragraph 54.a (SEP Project Completion Reports);
Appendix C, Paragraph D.1 (Shellfish - Species Selection)
Appendix C, Paragraph D.4 (Shellfish - Project Description);

Appendix C, Paragraph D.8 (Shellfish - Final Report);
Appendix C, Paragraph D.9 (Shellfish - educational materials)

EPA and DNREC shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. Schedules in submissions made by Premcor pursuant to Paragraphs 18, 20, 21, and 42 that are subject to approval pursuant to this Paragraph 66 shall not begin to run until EPA and DNREC have approved the submission or schedule pursuant to this Paragraph. (With respect to the SPCC plans submitted to EPA pursuant to Paragraph 42 and with respect to submissions under Appendix C (Shellfish), “EPA and DNREC” in these Paragraphs 66 - 70(b) shall be deemed to mean “EPA.”)^{2/}

67. If the submission is approved pursuant to Paragraph 66(a), Premcor or Motiva shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 66(b) or (c), Premcor or Motiva shall, upon written direction of EPA and

^{2/} With respect to the revised and updated Risk Management Plan and SPCC plans submitted to EPA pursuant to Paragraphs 18 and 42, respectively, EPA shall in writing (a) determine whether the plan meets currently-applicable minimum requirements; (b) determine that the plan meets currently-applicable minimum requirements upon specified conditions; (c) determine that part of the plan meets currently-applicable minimum requirements and that part does not; or (d) determine that no part of the plan meets currently-applicable minimum requirements. In Paragraphs 67 - 70(b) below, if the submission is a submission pursuant to Paragraph 18 or 42, the language of this footnote shall be deemed to be substituted for the language of the main text of Paragraphs 66 - 70(b). For example, in Paragraph 67, if the submission is an SPCC plan, the phrase “If the submission is *approved* pursuant to Paragraph 66(a)” shall be deemed to read “If the submission is *determined to meet currently-applicable minimum requirements* pursuant to Paragraph 66(a).”

DNREC take all actions required by the approved plan, report, or other item that EPA and DNREC determine are technically severable from any disapproved portions, subject to Premcor's or Motiva's right to dispute under Section X of this Decree (Dispute Resolution), only the specified conditions, the disapproved portions, and the determination as to what is technically severable.

68. If the submission is disapproved in whole or in part pursuant to Paragraph 66(c) or (d), then, subject to Premcor's or Motiva's right to dispute the disapproval under Section X of this Consent Decree (Dispute Resolution), Motiva or Premcor, as applicable, shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs.

69. a. If the original submission failed to substantially comply with Premcor's or Motiva's obligations under the Consent Decree, Stipulated Penalties applicable to the original submission shall accrue during the 30-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Premcor's or Motiva's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

b. If the original submission substantially complied with Premcor's or Motiva's obligations under the Consent Decree, but was disapproved in whole or in part and the resubmission is untimely or is disapproved in whole or in part,

then Stipulated Penalties shall accrue, not from the date of the original submission, but from the date of the resubmission.

70. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and DNREC may again require Premcor or Motiva to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Premcor's or Motiva's right to invoke Dispute Resolution and the right of EPA and DNREC to seek Stipulated Penalties as provided in the preceding Paragraphs.

70(a). After review of any plan, report, or other item that is required to be submitted pursuant to the following Paragraphs:

Paragraph 24 (regarding management follow-up reports), and
Paragraph 61.c.ii, iii, iv, v (portions of the Semiannual Reports by Premcor)

EPA and DNREC may under this Consent Decree object that: (a) a person has not been assigned to carry out any action item or mitigation action; (b) the date by which any action item or mitigation action is to be completed presents an unreasonable threat to human health or the environment; or (c) any action item or mitigation action contained in an inspection report submitted pursuant to Paragraph 61.c.ii, iii, iv, v presents an unreasonable threat to the environment.

70(b). If EPA or DNREC make such an objection, EPA or DNREC shall state the grounds for the objection and state any actions required to correct the objectionable aspects of the submission. Premcor shall take all actions required by EPA and DNREC or invoke the Dispute Resolution procedures of this Consent Decree. Premcor need not wait for EPA or DNREC's response to any submissions pursuant to

Paragraph 24 or Paragraph 61.c.ii, iii, iv, v before taking any action.

VIII. STIPULATED PENALTIES

71. If Motiva fails to pay the civil penalties required to be paid under Section IV (Civil Penalty and Response Costs), Paragraphs 9 or 10 of this Decree when due, Motiva shall pay the United States or DNREC or each of them, depending on which payment or payments is or are late, a stipulated penalty of \$750 per day for each day that each payment is late (a total of \$1,500 per day if both payments are late). If Motiva fails to pay the response costs required to be paid by Paragraphs 11 or 12 of this Decree when due, Motiva shall pay the United States or DNREC or both of them, depending on which payment or payments is or are late, a stipulated penalty of \$750 per day for each day that the payment is late (a total of \$1,500 per day if both payments are late). Late payment of the civil penalty or response costs shall be made in accordance with Section IV, above. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph 80, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 13 above.

72. Motiva shall be individually liable for Stipulated Penalties to the United States and DNREC for violations of obligations of this Consent Decree applicable to Motiva, unless excused under Section IX (Force Majeure). Premcor shall be individually liable for Stipulated Penalties to the United States and DNREC for violations of obligations of this Consent Decree applicable to Premcor, unless excused under Section IX (Force Majeure). Neither Motiva nor Premcor shall be liable for violations of

obligations of this Consent Decree applicable to the other company. A violation includes failing to perform any obligation required by the terms of this Decree, including any statement of work or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

73. Compliance Measures. The following Stipulated Penalties shall accrue for each violation identified below:

a. Alkylation Unit Operations. For each day during which Premcor transfers spent acid from the Stratco Unit or the Kellogg Unit in violation of the requirements of Paragraph 15 or 16 above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$5,000 per day	1st through 2nd day
\$7,500 per day	3rd through 5th day
\$10,000 per day	6th and subsequent days

(For the purposes of this Subparagraph, the first “day” shall be defined as the 24-hour period commencing with the initial violation. Each additional calendar day thereafter during which there is a violation shall constitute an additional day of noncompliance.

b. Spent Acid Handling. For each violation of the obligation to comply with 40 C.F.R. § 68.69 (Operating Procedures), 40 C.F.R. § 68.71 (Training), 40 C.F.R. § 68.73 (Mechanical Integrity), 40 C.F.R. § 68.75 (Management of Change), 40 C.F.R. § 68.77 (Pre-Startup Review), and 40 C.F.R. § 68.87(b) (Contractors), in managing spent sulfuric acid, as and to the extent required by Paragraph 18 of this Consent Decree:

<u>Penalty Per Violation</u>	<u>Number of Violations</u>
\$1,000	1st through 5th violations
\$3,000	6th through 10th violations
\$5,000	11th and subsequent violations

For a failure to submit to EPA and DNREC, within six months of the Effective Date of this Consent Decree, a revised Risk Management Plan addressing spent sulfuric acid, as and to the extent required by Paragraph 18 of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000 per day	1st through 30th day
\$2,000 per day	31st and subsequent days

c. Process Hazard Analyses For each violation of the obligation to submit a process hazard evaluation report or a follow-up management report as required by Paragraphs 20 and 21 and 24 of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000 per day	1st through 30th day
\$2,500 per day	31st day and subsequent

d. Tank Inspections – Calculations. For the failure to perform, or for improperly performing, any required corrosion rate calculation or ultrasonic thickness calculation in connection with an inspection required by Paragraph 25:

<u>Penalty Per Noncompliant Inspection</u>	<u>No. of Noncompliant Inspections</u>
\$2,000 per inspection	1st through 3rd inspections
\$3,000 per inspection	4th through 6th inspections
\$5,000 per inspection	7th and subsequent

e. Tank Inspections – API Checklists. For each inspection required by Paragraph 25 that fails to address each area identified on the "Tank In-Service Inspection Checklist" or the "Tank Out-of-Service Inspection Checklist," as applicable:

<u>Penalty Per Noncompliant Inspection</u>	<u>No. of Noncompliant Inspections</u>
\$1,000 per inspection	1st through 5th inspections
\$2,000 per inspection	6th through 10th inspections
\$3,000 per inspection	11th and subsequent

Violations subject to a stipulated penalty pursuant to Subparagraph d, above, shall not also be subject to a stipulated penalty pursuant to this Subparagraph e.

f. Tank Inspections – Inspector Qualifications. For each inspection in which Premcor is required under Paragraph 26 to utilize an API-certified inspector, but fails to utilize an inspector who provides evidence of API certification:

<u>Penalty Per Noncompliant Inspection</u>	<u>No. of Noncompliant Inspections</u>
\$2,000 per inspection	1st through 3rd inspections
\$5,000 per inspection	4th through 10th inspections
\$7,500 per inspection	11th and subsequent

g. Acid Tank Inspections – Minimum Frequencies. For violations of Paragraph 27.a as a result of a failure to conduct external in-service inspections to the extent required thereunder at least once every two years during the term of this Consent

Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500 per day	1st through 14th day
\$1,000 per day	15th through 30th day
\$2,000 per day	31st day and beyond

For violations of Paragraph 27.b as a result of a failure to conduct at least one internal inspection to the extent required thereunder during the term of the Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000 per day	1st through 30th day
\$2,500 per day	31st day and thereafter

h. Engineer Review of Inspection Reports. For each failure to have an inspection report reviewed and approved or disapproved by the Fixed Equipment Department ("FED") Supervisor (or other qualified Inspector as approved by the FED Supervisor) within 60 days of the inspection, and for each failure to have an inspection report reviewed by an engineer in the Reliability Support Group ("RSE"), as and to the extent required by Paragraph 28 (Review of Inspection Reports) and Appendix I (Tank Inspection Guidelines):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000 per day	1st through 14th day
\$2,000 per day	15th day and subsequent

i. Holes or Leaks in Tanks. For any violation of Paragraphs 30 or 33 following the identification by Premcor of a hole or leak in a Tank as defined in Paragraph 36:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$5,000 per day	1st through 14th day
\$10,000 per day	15th day and beyond.

j. Returning Tanks to Service After an Internal Inspection. For each instance in which a tank is returned to service without being inspected internally in violation of Paragraph 32 (Internal Inspection Before Return to Service): \$50,000 per violation.

k. Unsafe Condition Reports. For each day after the 90th day following the Effective Date of this Consent Decree that Premcor fails to have at least fifty percent (50%) of its employees in operating areas at the Delaware City Refinery complete training on the requirements of Appendix J of this Consent Decree: \$1,000 per

day. For each day after the 180th day following the Effective Date of this Consent Decree that Premcor fails to have all of its employees in operating areas at the Delaware City Refinery complete training on the requirements of Appendix J of this Consent Decree: \$5,000 per day. For purposes of this paragraph, penalties shall not be multiplied per individual employees.

l. Hot Work Permits. For a violation of the requirement under Paragraph 38 to institute, no later than six months after the Effective Date of this Consent Decree, the new hot work permitting procedure required by Paragraph 38: \$1,000 per violation. For each instance thereafter on which Premcor issues a Hot Work Permit without satisfying the requirements of Subparagraph 38.d: \$7,500 per violation.

m. Secondary Containment Valves. For each violation of Paragraph 40: \$1,000 per violation.

n. Master Drain Valves. For failing to have installed double valves, car seals, or locks on master drain valves no later than six month after the effective date of this Decree pursuant to Paragraph 41: \$2,000 per drain valve in violation. For each violation of Paragraph 41's requirement to keep (on master drain valves) locks locked, car seals maintained intact, and both valves of double valves kept closed: \$2,000 per violation.

o. MSDS. For Premcor's failure to obtain prior approval of revisions to the MSDS as required by Paragraph 43: \$5,000 per violation. For Motiva's failure to give the notice regarding revisions to the MSDS as required by Paragraph 44, \$5,000 per violation.

p. TOC Analyzer. For failing to have installed the TOC Analyzer or the sample probe by the dates specified in Paragraphs 45 or 46: \$1,000 per week.

74. Reporting and Notice Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting or notice requirements of Section VII and Appendix G (Environmental Management System) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

75. Project Compliance

a. If for any Project, Motiva has spent less than the amount set forth for that project in Paragraph 49, above, Motiva shall pay a stipulated penalty equal to the difference between the amount of total Eligible Project Costs incurred by Motiva for the project and the amount set forth for the Project in Paragraph 49.

b. If Motiva has completed a Project, but the Project is not satisfactory, Motiva shall pay, in addition to any penalty required under Subparagraph a, above:

For the Hybrid Bus SEP:	\$50,000
For the Conservation Easement and Land Restoration SEP:	\$30,000
For the Delaware River Shellfish Restoration SEP:	\$30,000
For the Local Fire Department Emergency Equipment SEP:	\$30,000
For the Refinery Meteorological Monitoring Station SEP:	\$30,000
For the Delaware River Monitoring EBP:	\$30,000

c. If Motiva abandons work on any Project, the Motiva shall pay a stipulated penalty of 50% of the Unspent Project Funds,^{3/} in addition to any penalty required under Subparagraph a, above, and any penalties owing under Subparagraph d, below, for milestones missed up to the time that the penalty under this Subparagraph accrues. The penalty under this Subparagraph shall accrue as of the date specified for completing the Project or the date performance ceases, whichever is earlier.

d. If Motiva fails to comply with the schedules in Section VI of this Consent Decree or in Appendices A to F to this Consent Decree (including the preparation of the Project Completion Reports), for each failure to meet an applicable milestone Motiva shall pay Stipulated Penalties of \$1,500 per month. Such penalties shall accrue from the date Motiva was required to meet each such milestone, until compliance with the milestone is achieved.

76. Subject to the provisions (a)-(c) of the immediately preceding Paragraph, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Motiva or Premcor, as applicable, shall pay any Stipulated Penalty within 30 days of receiving the United States' or DNREC's written demand, unless the Parties enter into Dispute Resolution, in which case the provisions of Paragraph 79 apply.

^{3/} "Unspent Project Funds" shall be the amount set forth for the Project in Paragraph 49 minus Eligible Project Costs incurred by Motiva for the Project up to the time that the penalty under this Subparagraph accrues.

77. The United States, or DNREC, or both may seek Stipulated Penalties under this Section. Before DNREC makes a written demand for stipulated penalties from Premcor under this Section for violations of Section V (Compliance Requirements) or Section VII (Reporting Requirements and Approval of Submittals), however, the United States and DNREC shall confer, and if DNREC and the United States have different positions regarding whether stipulated penalties should be demanded or the amount of the stipulated penalties to be demanded, the position of the United States shall govern. Regardless of whether one or both sovereigns seek Stipulated Penalties, Motiva or Premcor, as applicable, shall pay 50% to the United States and 50% to DNREC.

78. The United States and DNREC may, in the unreviewable exercise of their discretion, reduce or waive any Stipulated Penalties otherwise due that sovereign under this Consent Decree. Except as provided by Paragraph 77, the determination by one sovereign to waive or reduce the amount sought, shall not preclude the other sovereign from seeking Stipulated Penalties.

79. Stipulated Penalties shall continue to accrue as provided in Paragraph 76, above, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA or DNREC that is not appealed to the Court, Motiva or Premcor, as applicable, shall pay accrued penalties agreed or determined to be owing to the United States and DNREC within 30 days of the effective date of the agreement

or the receipt of EPA's or DNREC's decision or order;

- b. If the dispute is appealed to the Court, Motiva or Premcor, as applicable, shall pay all accrued penalties determined by the Court to be owing within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below;
- c. If any Party appeals the District Court's decision, Motiva or Premcor, as applicable, shall pay all accrued penalties determined to be owing within 15 days of receiving the final appellate court decision.

80. Motiva or Premcor, as applicable, shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 9, above or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07551 and United States Attorney's Office file Number 2001V00340 and delivered to the office of the United States Attorney, District of Delaware, Financial Litigation Unit, 1007 Orange Street, Suite 700, P.O. Box 2046, Wilmington, DE 19899-2046. Motiva or Premcor, as applicable, shall pay Stipulated Penalties owing to DNREC in accordance with Section IV, Paragraph 10.

81. At the time of payments of stipulated penalties required by this Section, Motiva or Premcor, as applicable, shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States and DNREC in accordance with Section XIV of this Decree (Notices). The notices shall reference the civil action numbers of these cases and DOJ case Number 90-5-1-1-07551 and United

States Attorney's Office file Number 2001V00340.

82. Neither Motiva nor Premcor shall deduct Stipulated Penalties paid under this Section in calculating federal or State income tax.

83. If Motiva or Premcor fails to pay Stipulated Penalties according to the terms of this Consent Decree, Motiva or Premcor, as applicable, shall be liable for interest on such penalties, as provided for in 28 U.S.C. §1961, accruing as of the date payment became due.

84. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Motiva's or Premcor's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, Clean Air Act, or 7 Del. C. Chs. 60 or 63, Motiva or Premcor, as applicable, shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

85. A "force majeure event" is any event beyond the control of Motiva or Premcor, as applicable, their contractors, or any entity controlled by Motiva or Premcor, as applicable, that delays the performance of any obligation under this Consent Decree despite Motiva or Premcor's, as applicable, best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or

minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Motiva's or Premcor's, as applicable, financial inability to perform any obligation under this Consent Decree.

86. Motiva or Premcor, as applicable, shall provide notice to EPA and DNREC orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Motiva or Premcor, as applicable, first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Motiva or Premcor, as applicable, shall also provide written notice to the United States and DNREC, as provided in Section XIV of this Consent Decree (Notices), within seven days of the time Motiva or Premcor, as applicable, first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Motiva's or Premcor's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Motiva's or Premcor's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Motiva or Premcor, as applicable, from asserting any claim of force majeure.

87. If the United States and DNREC agree that a force majeure event has occurred, the United States and DNREC may agree to extend the time for Motiva or Premcor, as applicable, to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States and DNREC agree to an extension of time, the appropriate

modification shall be made pursuant to Section XVII of this Consent Decree (Modification).

88. If the United States and DNREC do not agree that a force majeure event has occurred, or do not agree to the extension of time sought by Motiva or Premcor, as applicable, the United States' and DNREC's position shall be binding, unless Motiva or Premcor, as applicable, invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, Motiva or Premcor, as applicable, bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Motiva or Premcor, as applicable, gave the notice required by Paragraph 86; that the force majeure event caused any delay that Motiva or Premcor, as applicable, claims was attributable to that event; and that Motiva or Premcor, as applicable, exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

89. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures of this Section shall not apply to actions by the United States or DNREC to enforce obligations of Motiva or Premcor that have not been disputed in accordance with this Section.

90. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Motiva or Premcor, as applicable,

sends the United States and DNREC a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 14 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and DNREC shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Motiva or Premcor, as applicable, invokes formal dispute resolution procedures as set forth below.

91. Formal Dispute Resolution. Motiva or Premcor, as applicable, shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and DNREC a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Motiva's or Premcor's position and any supporting documentation relied upon by Motiva or Premcor, as applicable.

92. The United States and DNREC shall serve their Statement of Position within 30 days of receipt of Motiva's or Premcor's Statement of Position. The United States' and DNREC's Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and DNREC. The United States' and DNREC's Statement of Position shall be binding on Motiva or Premcor, as applicable, unless Motiva or Premcor, as applicable, files a motion for judicial review of the dispute in accordance with the following Paragraph.

93. Motiva or Premcor, as applicable, may seek judicial review of the dispute by filing with the Court and serving on the United States and DNREC, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 14 days of receipt of the United States' and DNREC's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Motiva's or Premcor's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

94. The United States and DNREC shall respond to Motiva's or Premcor's motion within the time period allowed by the Local Rules of this Court. Motiva or Premcor, as applicable, may file a reply memorandum, to the extent permitted by the Local Rules.

95. In any dispute under this Section, Motiva or Premcor, as applicable, shall bear the burden of demonstrating that its position complies with this Consent Decree. The United States and DNREC reserve the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Premcor and Motiva reserve the right to oppose any such argument.

96. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Motiva or Premcor under this Consent Decree, unless and until final resolution of the dispute so

provides. Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

97. The United States, DNREC, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry to the Delaware City Refinery, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or DNREC in accordance with the terms of this Consent Decree;
- c. obtain samples;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Motiva's or Premcor's compliance with this Consent Decree.

98. Until six months after the termination of this Consent Decree, Motiva and Premcor shall retain, and shall instruct their respective contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that demonstrate or document Motiva's or Premcor's compliance or noncompliance with the obligations of this Consent Decree, provided, however, that Premcor shall not be required to retain copies of unsafe condition reports (required by Section V.F of this Consent Decree) or hot work permits (required under Section V.G) for a period longer than two years following the creation of such documents. This record retention

requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or DNREC may request copies of any documents or records required to be maintained under this Paragraph.

99. Before destroying any documents or records subject to the requirements of the preceding Paragraph, Motiva or Premcor, as applicable, shall notify the United States and DNREC at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or DNREC, Motiva or Premcor shall deliver any such records or documents to EPA or DNREC. Motiva and Premcor may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Motiva or Premcor asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

100. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or DNREC pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Motiva or Premcor to maintain records or information

imposed by applicable federal or state laws, regulations, permits, or orders.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

101. This Consent Decree resolves with respect to Motiva, and to the extent that Premcor may be liable for the same violations, with respect to Premcor, the civil claims of the United States and DNREC for the violations alleged in the Amended Complaints.

102. The United States and DNREC reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. This Consent Decree shall not be construed to prevent or limit the rights of the United States or DNREC to obtain penalties or injunctive relief under the Clean Air Act, the Clean Water Act, CERCLA, EPCRA, or 7 Del. C. Chs. 60, 63, 74A, and 77, or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

Compliance with this Consent Decree shall not relieve Motiva or Premcor from any obligation to comply with those statutes, laws, regulations, or permits. The United States and DNREC further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Delaware City Refinery, whether related to the violations addressed in this Consent Decree or otherwise.

103. The United States and DNREC do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Motiva's or Premcor's

compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Air Act, the Clean Water Act, CERCLA, EPCRA, or 7 Del. C. Chs. 60, 63, 74A, or 77.

104. This Consent Decree does not limit or affect the rights of Motiva or Premcor or of the United States or DNREC against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Motiva or Premcor, except as otherwise provided by law.

105. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

106. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and DNREC shall be entitled to collect the costs (including attorneys fees') incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Motiva or Premcor.

XIV. NOTICES

107. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section and
Environment and Natural Resources Div.
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07551
and

Chief, Civil Division
United States Attorney's Office
District of Delaware
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046

Michael Welsh and
Mail Code 3HS61 transmittal
Hazardous Site Cleanup Division letters only
U.S. EPA - Region III to:
1650 Arch Street
Philadelphia, PA 19103-2029
Ph 215-814-3285
Fax: 215-814-3254

Joyce Howell
Mail Code 3EC00
Senior Counsel, OECEJ
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Ph 215-814-2644
Fax 215-814-2905

To EPA only, as opposed to the United States:

Michael Welsh and
Mail Code 3HS61 transmittal
Hazardous Site Cleanup Division letters only
U.S. EPA - Region III to:
1650 Arch Street
Philadelphia, PA 19103-2029
Ph 215-814-3285
Fax: 215-814-3254

Joyce Howell
Mail Code 3EC00
Senior Counsel, OECEJ
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Ph 215-814-2644
Fax 215-814-2905

To DNREC:

David Ormond and
Deputy Attorney General
Delaware Dept. of Justice
Civil Division
102 W. Water Street
Dover, DE 19904

James Werner, Director
Division of Air and Waste Mgt.
DNREC,
89 Kings Highway
Dover, DE 19901

To Motiva:

Bert Molina
Manager - Regulatory Affairs
Motiva Enterprises LLC
Pennzoil North Tower
700 Milam Street, PNT 11016
Houston, TX 77002

and

Patrick Conner
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

and

Nate Andrisani
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

To Premcor:

James Fedena, Manager
Environmental, Health & Safety
The Premcor Refining Group Inc.
2000 Wrangle Hill Road
Delaware City, DE 19706

and

Jeffrey Dill, Esq.
Assistant General Counsel
The Premcor Refining Group Inc.
1700 East Putnam, Suite 400
Old Greenwich, CT 06870

108. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address.

109. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

110. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

111. The Court shall retain jurisdiction over these cases until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute

Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

112. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties affected by the modification. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. For the purposes of this Paragraph, changes that are not material and may be made by written agreement of the affected Parties without being filed with, or approved by, the Court include, but are not limited to, changes in the schedules contained in Appendices A - F (regarding the environmental Projects), funding changes that shift less than \$100,000 within or between environmental Projects, and changes in the wording of the MSDS at Appendices K and L.

XVIII. TERMINATION

113. After five years from the Effective Date of this Consent Decree, if Motiva is in compliance with this Consent Decree, including the requirements of Section VI (Supplemental Environmental Projects) and Section VII (Reporting Requirements) of this Consent Decree, and if Motiva has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Motiva may serve upon the United States and DNREC a request that the Consent Decree be terminated as to Motiva. The request for termination shall certify that Motiva has satisfied the requirements of this Consent Decree applicable to Motiva and include all necessary supporting documentation.

114. After three years from the Effective Date of this Consent Decree, if

Premcor is in compliance with this Consent Decree, including the requirements of Section V (Compliance Requirements) and Section VII (Reporting Requirements) of this Consent Decree, and if Premcor has paid any accrued Stipulated Penalties as required by this Consent Decree, Premcor may serve upon the United States and DNREC a request that the Consent Decree be terminated as to Premcor. The request for termination shall certify that Premcor has satisfied the requirements of this Consent Decree applicable to Premcor and include all necessary supporting documentation.

115. Following receipt by the United States and DNREC of a request for termination, the United States, DNREC, and Motiva or Premcor, as applicable, shall confer informally concerning the Request and any disagreements as to whether Motiva or Premcor, as applicable, has satisfactorily complied with the requirements for termination of this Consent Decree. The period of informal discussions shall not exceed 21 days from the date of the request for termination, unless that period is modified by written agreement. If the United States and DNREC agree that the Decree may be terminated as to Motiva or Premcor, the United States, DNREC, and Motiva or Premcor, as applicable, shall submit, for the Court's approval, a joint stipulation terminating the Decree as to Motiva or Premcor.

116. If the United States and DNREC do not agree that the Decree may be terminated as to Motiva or Premcor, Motiva or Premcor, as applicable, may serve and file a motion seeking termination of the Consent Decree, provided, however, neither Motiva nor Premcor shall serve such a motion until 30 days after the conclusion of the period of informal consultation provided by the preceding Paragraph.

XIX. PUBLIC PARTICIPATION

117. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and DNREC reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Motiva and Premcor consent to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

118. Each undersigned representatives of Motiva and Premcor, the Secretary of the Delaware Department of Natural Resources and Environmental Control, and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

119. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

120. Motiva and Premcor agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States or DNREC has notified Motiva and Premcor in writing that it no longer supports entry of the Decree.

121. Motiva and Premcor agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree.

XXI. INTEGRATION

122. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

123. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, DNREC, Motiva, and Premcor.

Dated and entered this _____ day of _____, 2005.

UNITED STATES DISTRICT JUDGE
District of Delaware

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA:

KELLY A. JOHNSON /
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

ROBERT R. KLOTZ
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA:

RICHARD G/ANDREWS
Acting United States Attorney
District of Delaware

RUDOLPH/CONTRERAS
Chief, Civil Division
United States Attorneys Office
District of Delaware
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046

DOUGLAS E. McCANN
Assistant United States Attorney
United States Attorneys Office
District of Delaware
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (con't):

GRANT Y. NAKAYAMA
Assistant Administrator
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency

WE HEREBY CONSENT to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (con't):

DONALD S. WELSH
Regional Administrator
U.S. Environmental Protection Agency
Region III

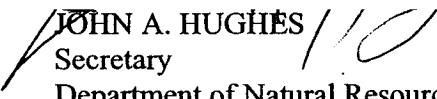
WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency
Region III

JOYCE A. HOWELL
Senior Counsel
Office of Compliance, Enforcement and
Environmental Justice
U.S. Environmental Protection Agency
Region III

NATALIE L. KATZ
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III

WE HEREBY CONSENT to the entry of this Consent Decree:

**FOR PLAINTIFF THE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL, an agency of the State of
Delaware:**


JOHN A. HUGHES
Secretary
Department of Natural Resources and
Environmental Control

DAVID L. ORMOND, JR.
Deputy Attorney General
Delaware Department of Justice

WE HEREBY CONSENT to the entry of this Consent Decree:

**FOR PLAINTIFF THE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL, an agency of the State of
Delaware:**

JOHN A. HUGHES
Secretary
Department of Natural Resources and
Environmental Control

DAVID L. ORMOND, JR.
Deputy Attorney General
Delaware Department of Justice

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR DEFENDANT MOTIVA ENTERPRISES LLC:

BERT MOLINA /
Manager - Regulatory Affairs
Motiva Enterprises LLC

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR DEFENDANT MOTIVA ENTERPRISES LLC:

R. JUDSON SCAGGS, JR. (#2676)

MEGAN E. WARD (#3785)

Morris, Nichols, Arsht & Tunnell

Chase Manhattan Centre, 18th Floor

1201 North Market Street

P.O. Box 1347

Wilmington, DE 19899

Local Counsel to Motiva Enterprises LLC

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE PREMCOR REFINING GROUP INC.

BRUCE A. JONES
Vice President
Environment, Health and Safety
The Premcor Refining Group Inc.

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE PREMCOR REFINING GROUP INC.

SOMERS (CHIP) S. PRICE
Potter, Anderson & Corroon LLP
Hercules Plaza
1313 North Market Street
Wilmington, DE 19801
Phone: (302) 984-6000

Local Counsel to Premcor Refining Group Inc.